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SENATE BILL NO. 96

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 4, 2014)

(Patrons Prior to Substitute—Senators Reeves, Ebbin and Miller [SB17])

A *BILL to amend and reenact § 18.2-371.2 of the Code of Virginia, relating to purchase, etc., of tobacco products by minors; nicotine vapor products and alternative nicotine products; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-371.2 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-371.2. Prohibiting purchase or possession of tobacco products, nicotine vapor products, and alternative nicotine products by minors or sale of tobacco products, nicotine vapor products, and alternative nicotine products to minors.

A. No person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, ~~including but not limited to cigarettes, cigars, bidis, and wrappings~~ *nicotine vapor product, or alternative nicotine product.*

Tobacco products may be sold from a vending machine only if the machine is (i) posted with a notice, in a conspicuous manner and place, indicating that the purchase or possession of tobacco products by minors is unlawful and (ii) located in a place which is not open to the general public and is not generally accessible to minors. An establishment which prohibits the presence of minors unless accompanied by an adult is not open to the general public.

B. No person less than 18 years of age shall attempt to purchase, purchase, or possess any tobacco product, ~~including but not limited to cigarettes, cigars, bidis, and wrappings~~ *nicotine vapor product, or alternative nicotine product.* The provisions of this subsection shall not be applicable to the possession of tobacco products, ~~including wrappings, nicotine vapor products, or alternative nicotine products~~ by a person less than 18 years of age making a delivery of tobacco products, ~~including wrappings, nicotine vapor products, or alternative nicotine products~~ in pursuance of his employment. This subsection shall not apply to purchase, attempt to purchase, or possession by a law-enforcement officer or his agent when the same is necessary in the performance of his duties.

C. No person shall sell a tobacco product, ~~including but not limited to cigarettes, cigars, bidis, and wrappings, nicotine vapor product, or alternative nicotine product~~ to any individual who does not demonstrate, by producing a driver's license or similar photo identification issued by a government agency, that the individual is at least 18 years of age. Such identification is not required from an individual whom the person has reason to believe is at least 18 years of age or who the person knows is at least 18 years of age. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least 18 years of age shall be a defense to any action brought under this subsection. In determining whether a person had reason to believe an individual is at least 18 years of age, the trier of fact may consider, but is not limited to, proof of the general appearance, facial characteristics, behavior, and manner of the individual.

This subsection shall not apply to mail order or Internet sales, *provided that the person offering the tobacco product, nicotine vapor product, or alternative nicotine product for sale through mail order or the Internet (i) prior to the sale of the tobacco product, nicotine vapor product, or alternative nicotine product verifies that the purchaser is at least 18 years of age through a commercially available database that is regularly used by businesses or governmental entities for the purpose of age and identity verification and (ii) uses a method of mailing, shipping, or delivery that requires the purchaser's signature before the tobacco product, nicotine vapor product, or alternative nicotine product will be released to the purchaser.*

D. A violation of subsection A or C by an individual or by a separate retail establishment that involves a *nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi* ~~shall be~~ is punishable by a civil penalty not to exceed \$100 for a first violation, a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to exceed \$500 for a third or subsequent violation.

A violation of subsection A or C by an individual or by a separate retail establishment that involves the sale, distribution, or purchase of a bidi ~~shall be~~ is punishable by a civil penalty in the amount of \$500 for a first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil penalty in the amount of \$2,500 for a third or subsequent violation. Where a defendant retail establishment offers proof that it has trained its employees concerning the requirements of this section, the court shall suspend all of the penalties imposed hereunder. However, where the court finds that a retail establishment has failed to so train its employees, the court may impose a civil penalty not to

60 exceed \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving
61 a *nicotine vapor product, alternative nicotine product, or tobacco product* other than a bidi.

62 A violation of subsection B ~~shall be~~ is punishable by a civil penalty not to exceed \$100 for a first
63 violation and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as
64 an alternative to the civil penalty, and upon motion of the defendant, prescribe the performance of up to
65 20 hours of community service for a first violation of subsection B and up to 40 hours of community
66 service for a second or subsequent violation. If the defendant fails or refuses to complete the community
67 service as prescribed, the court may impose the civil penalty. Upon a violation of subsection B, the
68 judge may enter an order pursuant to subdivision A 9 of § 16.1-278.8.

69 Any attorney for the Commonwealth of the county or city in which an alleged violation occurred
70 may bring an action to recover the civil penalty, which shall be paid into the state treasury. Any
71 law-enforcement officer may issue a summons for a violation of subsection A, B, or C.

72 E. 1. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the
73 required health warning. The proprietor of every retail establishment ~~which~~ that offers for sale any
74 tobacco product, ~~including but not limited to cigarettes, cigars, and bidis,~~ *nicotine vapor product, or*
75 *alternative nicotine product* shall post in a conspicuous manner and place a sign or signs indicating that
76 the sale of tobacco products, ~~including wrappings, nicotine vapor products, or alternative nicotine~~
77 *products* to any person under 18 years of age is prohibited by law. Any attorney for the county, city, or
78 town in which an alleged violation of this subsection occurred may enforce this subsection by civil
79 action to recover a civil penalty not to exceed \$50. The civil penalty shall be paid into the local
80 treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted
81 the action.

82 2. For the purpose of compliance with regulations of the Substance Abuse and Mental Health
83 Services Administration published at 61 Federal Register 1492, the Department of Agriculture and
84 Consumer Services may promulgate regulations which allow the Department to undertake the activities
85 necessary to comply with such regulations.

86 3. Any attorney for the county, city, or town in which an alleged violation of this subsection
87 occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$100. The
88 civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to
89 the county, city, or town which instituted the action.

90 F. Nothing in this section shall be construed to create a private cause of action.

91 G. Agents of the Virginia Alcoholic Beverage Control Board designated pursuant to § 4.1-105 may
92 issue a summons for any violation of this section.

93 H. As used in this section:

94 "*Alternative nicotine product*" means any noncombustible product containing nicotine that is intended
95 for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.

96 "*Alternative nicotine product*" does not include any nicotine vapor product, tobacco product, or product
97 regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21
98 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

99 "Bidi" means a product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*)
100 or tendu leaf (*diospyros exculpra*), or any other product that is offered to, or purchased by, consumers as
101 a bidi or beedie; ~~and~~.

102 "*Nicotine vapor product*" means any noncombustible product containing nicotine that employs a
103 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,
104 regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other
105 form. "*Nicotine vapor product*" includes any electronic cigarette, electronic cigar, electronic cigarillo,
106 electronic pipe, or similar product or device and any cartridge or other container of nicotine in a
107 solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar,
108 electronic cigarillo, electronic pipe, or similar product or device. "*Vapor product*" does not include any
109 product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug,
110 and Cosmetic Act.

111 "*Tobacco product*" means any product made of tobacco and includes cigarettes, cigars, smokeless
112 tobacco, pipe tobacco, bidis, and wrappings. "*Tobacco product*" does not include any nicotine vapor
113 product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21
114 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

115 "Wrappings" includes papers made or sold for covering or rolling tobacco or other materials for
116 smoking in a manner similar to a cigarette or cigar.